

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL REVISION APPLICATION No. 6 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE H.B.ANTANI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment?
 - 2 To be referred to the Reporter or not?
 - 3 Whether Their Lordships wish to see the fair copy of the judgment?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?
 - 5 Whether it is to be circulated to the Civil Judge?
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RAJPUROHIT G.M.P. INDIA LTD. - Applicant
Versus
STAR AUTOMATION PVT. LTD. AND OTHERS - Opponents

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Appearance :

MR NITIN M AMIN for Applicant.

MR NS SHETH for Opponent Nos.: 1 - 2.

MS NANDINI JOSHI, ADDITIONAL PUBLIC PROSECUTOR for Opponent No. 3.

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CORAM : HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 24/04/2006

ORAL JUDGMENT

1. Heard Mr. N. M. Amin, learned Advocate for the applicant-original complainant; Mr. N. S. Sheth, learned Advocate for opponent Nos. 1 and 2 - original accused and Ms. Nandini Joshi, learned Additional Public Prosecutor

for opponent No. 3-State.

2. The present application is preferred under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973. It is directed against the order dated 26-09-2000 passed by Metropolitan Magistrate, Court No. 15, Ahmedabad in Criminal Case No. 472 of 1998. The learned Trial Court, on the application preferred by the accused for dropping the proceedings, passed the aforesaid order and the proceedings against the accused have been dropped and the complaint of the present applicant was ordered to be filed.

3. Mr. Amin, learned Advocate for the applicant, submitted that the order passed by the learned Magistrate is neither warranted by law nor on account of facts and circumstances of the case. The learned Advocate argued that the learned Magistrate has decided the entire case without giving an opportunity of being heard to the complainant to prove its case and, therefore, the order requires to be quashed and set aside. It is also contended that the order has been passed by the learned Magistrate only on the strength of the application and the documents submitted by the accused. The learned

Advocate pleaded that the contentions, which were raised by the accused, were the questions of fact, which were required to be proved by the accused and without giving the opportunity to the complainant to say on this count, the learned Magistrate accepted the submissions made on behalf of the accused as true and filed the complaint of the present applicant. Finally, the learned Advocate urged that as the order passed by the learned Magistrate is illegal, improper and unjust, the same may be quashed and set aside.

4. As against the above mentioned submissions, Mr. N. S. Sheth, learned Advocate for opponent Nos. 1 and 2-original accused, submitted that after going through the submissions made on behalf of the accused, the learned Magistrate rightly came to the conclusion that there was no substance in the complaint and, therefore, the proceedings were dropped. The learned Advocate pointed out that the complainant had not made out a *prima facie* case before the learned Magistrate and, therefore, taking into consideration the documents produced on behalf of the accused, the order came to be passed by the learned Magistrate. As there is no illegality or impropriety in the order passed by the learned Magistrate, the Criminal

Revision Application cannot be entertained and the same may be rejected.

5. Taking into consideration the rival submissions of both the parties and on perusing the order passed by the learned Magistrate, it becomes quite clear that the learned Magistrate has, solely on the basis of the documents produced on behalf of the accused, passed the order whereby the application of the accused was allowed and the complaint of the applicant under Section 138 of the Negotiable Instruments Act was filed. The learned Magistrate, in my view, erred in deciding the matter merely on the basis of the documents produced by the accused. The opportunity of being heard was required to be given to both the sides before deciding the complaint under Section 138 of the Negotiable Instruments Act. The learned Magistrate, in my view, was required to follow the normal procedure of criminal trial as no exceptional circumstances are mentioned by the learned Magistrate in allowing the application of the accused and dropping the case of the complainant. The learned Magistrate, in my view, proceeded with the case without permitting both the sides to adduce evidence and passed the order.

6. In view of the aforesaid facts and circumstances of the case, the Criminal Revision Application is allowed. The order dated 26-09-2000 passed by Metropolitan Magistrate, Court No. 15, Ahmedabad in Criminal Case No. 472 of 1998 is hereby quashed and set aside. The matter is remitted to the learned Magistrate to give a fresh hearing of the matter and allow both the parties to adduce the evidence while deciding the application under Section 138 of the Negotiable Instruments Act preferred by the complainant. The learned Magistrate would pass the order after hearing both the sides as early as possible. Rule is made absolute to the extent indicated hereinabove. The Criminal Revision Application stands disposed of accordingly.

[H. B. ANTANI, J.]

/shamnath